STATE OF MICHIGAN

COURT OF APPEALS

OLIVE BRANCH MASONIC TEMPLE ASSOCIATION, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED February 21, 2006
v	No. 263765 Wayne Circuit Court
CITY OF DEARBORN, Defendant/Counter-Plaintiff-Appellee.	LC No. 03-318687-CZ

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiff, Olive Branch Masonic Temple Association, appeals from a stipulated order of dismissal. Olive Branch challenges an earlier order by the trial court that granted summary disposition to the City of Dearborn pursuant to MCR 2.116(C)(8).[1] We affirm.

Olive Branch claims that it acquired a prescriptive easement over a parking lot owned by the City of Dearborn. The record reflects that, on June 4, 1975, Dearborn bought the parking lot

[1] This Court reviews de novo a trial court's decision to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A trial court properly grants a motion for summary disposition pursuant to MCR 2.116(C)(8) where the opposing party has failed to state a claim on which relief can be granted. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 42; 672 NW2d 884 (2003). Such motions test the legal sufficiency of a claim based solely on the pleadings. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). When considering motions brought under MCR 2.116(C)(8), courts must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the non-moving parties. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). The motion "may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* (internal quotations omitted).

for $75,000 from the Penn Central Transportation Company. Olive Branch bought its nearby building from the Odd Fellows in 1984. Though Olive Branch claims to have used the parking lot for many years, Dearborn recently rezoned the lot for a condominium development and agreed to sell it to a developer. Olive Branch filed a complaint and sought to prevent Dearborn from selling the parking lot and asserted that the rezoning of the lot would amount to an unconstitutional taking and a violation of the public trust.

I. Prescriptive Easement

Olive Branch argues that the trial court erred when it ruled that Olive Branch does not have a prescriptive easement in the parking lot.[2] We disagree because, were we to find that Olive Branch's complaint states the elements of a claim for prescriptive easement, the trial court reached the correct result when it dismissed the claim.

We note that the trial court erroneously relied on MCL 600.5821(1) to justify its dismissal of Olive Branch's prescriptive easement claim.[3] Specifically, the trial court held that "a claim for adverse possession may not be brought against a governmental entity" and it cited MCL 600.5821(1) and *Goodall v Whitefish Hunt Club*, 208 Mich App 642[; 528 NW2d 221] (1995). MCL 600.5821(1) does not bar claims against *governmental entities,* but instead, limits its application to actions against the *state.* Olive Branch's claim, however, is nevertheless barred under MCL 600.5821(2). MCL 600.5821(1) and (2) provide, in pertinent part:

> (1) Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.
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> (2) Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.

According to MCL 600.5821(1), a party may not assert an adverse possession claim against the state because the state is not subject to the period of limitations, and therefore, is not required to take action within 15 years to prevent the party taking title by adverse possession under MCL

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[2] "An easement is the right to use the land of another for a specified purpose." *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). An easement does not displace the general possession of the land by its owner, and it grants the easement holder qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement. *Id.* An easement by prescription arises where a party has used another's property in a manner that is open, adverse, and continuous for a period of fifteen years. *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000). An easement by prescription claim requires the same elements as an adverse possession claim, except for exclusivity. *Id.* at 679.

[3] We review questions of statutory interpretation de novo. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

600.5801(4). MCL 600.5821(2) provides a similar rule for municipal corporations. Furthermore, Michigan law, in one form or another, has exempted municipalities from adverse possession claims since 1907. See *Adams Outdoor Advertising, Inc v Charter Township of Canton,* ___ Mich App ___; ___ NW2d ___ (Docket No. 256791, issued January 10, 2006), slip op at 4-5 (discussing the prior versions MCL 600.5821). Accordingly, we hold that MCL 600.5821(2) bars Olive Branch's claim of an easement by prescription against Dearborn.[4]

Olive Branch argues that the bar imposed by MCL 600.5821 is inapplicable because it is not asserting a prescriptive easement against Dearborn, but rather, Olive Branch claims that it received a fully vested prescriptive easement over the parking lot when the Odd Fellows transferred the building to Olive Branch in 1984. Specifically, Olive Branch argues that the Odd Fellows acquired a prescriptive easement against Dearborn's predecessor in title, Penn Central Transportation Company, and that Penn Central was not a governmental entity subject to MCL 600.5821. In this regard, the rule cited by this Court in *Gorte v Dep't of Transportation,* 202 Mich App 161; 507 NW2d 797 (1993), controls:

> Because [MCL 600.5821] cannot be applied if it would abrogate or impair a vested right, it is necessary to determine when a claim of title to property by adverse possession vests. Generally, the expiration of a period of limitation vests the rights of the claimant. It is further the general view with respect to adverse possession that, upon the expiration of the period of limitation, the party claiming adverse possession is vested with title to the land, and this title is good against the former owner and against third parties. Defendant argues the contrary view, that plaintiffs' possession of the property merely gave plaintiffs the ability, before the amendment of § 5821, to raise the expiration of the period of limitation as a defense to defendant's assertion of title. Contrary to defendant's arguments, however, Michigan courts have followed the general rule that the expiration of the period of limitation terminates the title of those who slept on their rights and vests title in the party claiming adverse possession. Thus, assuming all other elements have been established, one gains title by adverse possession when the period of limitation expires, not when an action regarding the title to the property is brought. [*Gorte, supra* at 168-169.]

According to Olive Branch's complaint, the Odd Fellows and Olive Branch have used the parking lot since 1961. Thus, viewing the allegations in the complaint in Olive Branch's favor, when Dearborn acquired the parking lot in June 1975, the longest the Odd Fellows would have

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[4] We recognize that MCL 600.5821(2) requires that the action be "brought" by the municipality, and it is not clear whether the instant action was "brought" by Dearborn because Dearborn merely filed a counter-complaint that alleged slander of title. However, the inevitable conclusion, as more fully discussed in this opinion, is that Olive Branch cannot acquire a prescriptive easement over the parking lot. In this regard, this Court may affirm a trial court's decision where it has reached the right result, albeit for the wrong reason. *Taylor v Laban,* 241 Mich App 449, 458; 616 NW2d 229 (2000). Moreover, any error by the trial court is harmless and will not be reversed on appeal. MCR 2.613(A).

been using the parking lot was approximately fourteen years, which would not have not been a sufficient amount of time to give the Odd Fellows a vested prescriptive easement in the parking lot. *Gorte, supra* at 168-169; MCL 600.5801(4). Even if we calculate fifteen years from January 1, 1961, the earliest the Odd Fellows would have acquired a vested easement by prescription would have been January 1, 1976, which is *after* Dearborn bought the parking lot. Because the Odd Fellows could not have acquired an easement by prescription against Dearborn in 1975, the Odd Fellows could not have passed along any such interest when it sold Olive Branch the building. See 1961 PA 236; *Adams, supra,* slip op at 4-5. Therefore, the trial court correctly granted summary disposition under MCR 2.116(C)(8) because "no factual development could possibly justify recovery." *Adair, supra* at 119.[5]

II. Public Trust

Olive Branch's alternative theories of recovery also fail. Olive Branch's "violation of public trust" claim is founded on a cause of action that does not exist in Michigan. Under this theory, Olive Branch essentially alleges that Dearborn does not have the authority to vacate or sell parking lots because the parking lots serve a public purpose, and therefore, Dearborn is holding the disputed parking lot as the trustee for Olive Branch, the beneficiary. Olive Branch, however, fails to cite any controlling authority to support its allegations. To the contrary, Dearborn has the statutory authority to sell parking lots under MCL 117.4e(3). According to the statute, Dearborn may, in its charter, provide:

> For the maintenance, development, operation, of its property and upon the discontinuance thereof to lease, sell or dispose of the same subject to any restrictions placed thereupon by law: Provided, That on the sale of any capital asset of a municipally owned utility the money received shall be used in procuring a similar capital asset, or placed in the sinking fund to retire bonds issued for said utility. [MCL 117.4e(3).]

Indeed, Dearborn's charter includes the following provisions:

> **Section 5.1. Powers of the city.**
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> The City and its officers shall have all of the powers and immunities permitted by law unless a power or immunity is specifically denied them by this charter. These powers may only be exercised to promote the public peace and health and for the safety of persons and property and to advance the interests of good government and the prosperity of the City and its people.
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> * * *

[5] Olive Branch further contends that the trial court erred when it granted summary disposition to Dearborn because there remain genuine issues of material fact with respect to the exact property interests of the parties. Issues of fact, however, are irrelevant for purposes of a motion brought under MCR 2.116(C)(8).

Section 8.2. Streets and alleys.

> The Council shall have the power, to the extent permitted by law, to establish, vacate and control and regulate the use of its streets, alleys, bridges and public places and the space above and beneath them.

According to MCL 114.7e(3) and the Dearborn City Charter, Dearborn was not required to hold the parking lot for Olive Branch's benefit. Accordingly, the trial court correctly granted Dearborn's motion for summary disposition of Olive Branch's "violation of public trust" theory of liability under MCR 2.116(C)(8).

III. Easement by Estoppel

We also reject Olive Branch's "easement by estoppel" theory. In *Bentley v Cam*, 362 Mich 78; 106 NW2d 528 (1960), our Supreme Court ruled that, in the absence of fraud, title to real estate may not rest on estoppel. Here, Olive Branch did not plead allegations relating to "easement by estoppel" and clearly did not plead particular facts to support a claim of fraud as is required by MCR 2.112(B)(1).

IV. Unconstitutional Taking

Olive Branch's "unconstitutional taking" claim is also without merit. Eminent domain is an inherent right of a state to condemn private property for public use. *In re Acquisition of Land-Virginia Park*, 121 Mich App 153, 158; 328 NW2d 602 (1982). When exercising its power of eminent domain, the state, or those to whom the power has been lawfully delegated, must pay the owner just compensation. *Id.* Where the property has been damaged rather than completely taken by governmental actions, the owner may be able to recover by way of inverse condemnation. *Id.* at 158. An inverse condemnation suit is one instituted by a private property owner whose property, while not formally taken for public use, has been damaged by a public improvement undertaking or other public activity. *Id.* Inverse condemnation is "'a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Id.* at 158-159 (citation omitted).

The obvious presupposition underlying an unconstitutional taking claim is that the claimant has a property interest in the property at issue. As discussed, Olive Branch failed to plead a viable property interest in the property. Therefore, again, the trial court did not err in granting Dearborn's motion for summary disposition under MCR 2.116(C)(8).

V. Request to Amend Complaint

Olive Branch asserts that the trial court should have permitted it to amend its complaint.[6] Olive Branch offered no explanation to the trial court with respect to which amendments it would include in its amended complaint and has otherwise failed to show a viable theory of recovery. A trial court does not abuse its discretion by denying a request to amend when the plaintiff has failed to comply with the written amendment requirement of MCR 2.118(A)(4) or the amendment would be futile. *Lown v JJ Eaton Place*, 235 Mich App 721, 726; 598 NW2d 633 (1999); *Burse v Wayne Co Medical Examiner*, 151 Mich App 761, 768; 391 NW2d 479 (1986). Furthermore, Olive Branch neglects to substantiate within the record the content of the amended pleadings it desires to file, which prevents us from addressing the merits of its amendment argument. See *Burse*, *supra* at 768. The trial court did not abuse its discretion by denying Olive Branch's request to amend its complaint.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Henry William Saad

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[6] This Court reviews the denial of a motion for leave to amend pleadings for an abuse of discretion. *Franchino v Franchino*, 263 Mich App 172, 189, 193; 687 NW2d 620 (2004). To constitute an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.* at 193.

MCR 2.118(A)(2) states: "Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires." Further, the Supreme Court has provided that:

> A motion to amend ordinarily should be granted, and denied only for particularized reasons:
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> "In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be 'freely given.'" [*Ben P Fyke & Sons, Inc v Gunter Co*, 390 Mich 649, 656; 213 NW2d 134 (1973), quoting *Foman v Davis*, 371 US 178, 182; 83 S Ct 227; 9 L Ed 2d 222 (1962).]

"On a motion to amend, a court should ignore the substantive merits of a claim or defense unless it is legally insufficient on its face and, thus, . . . it would be 'futile' to allow the amendment." *Fyke*, *supra* at 660. Where a plaintiff merely restates or slightly elaborates on counts or allegations already pleaded, an amendment is futile. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 76; 592 NW2d 724 (1998).